83-716

No. A-208

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

CAROLE JUNE CATON, Petitioner

v.

PAUL WILLIAM CATON

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

Carole June Lawson
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*Proceeding for herself

QUESTIONS PRESENTED

1. Whether the Oklahoma Court of Appeals may hold that it is acceptable for a male to use 10 O.S. §§ 501-508, providing for blood tests, to prove nonpaternity of a child while denying blood tests to a similarly situated female attempting to prove nonpaternity.

2. Whether petitioner has a right to be heard, through the vehicle of blood grouping tests, which could provide the only scientific and impartial evidence of the identity of the natural father of her minor child.

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Carole June Lawson (formerly Caton), petitions for a writ of certiorari to the Oklahoma Supreme Court for the purpose of reviewing the judgment of the Oklahoma Court of Appeals.

OPINIONS BELOW

The opinion of the Oklahoma Court of Appeals, which was not for publication, is printed in Appendix A. The Journal Entry of the Supreme Court of Oklahoma denying certiorari is printed in Appendix B.

JURISDICTION

The judgment of the Oklahoma Court of Appeals was entered on March 15, 1983. A petition to the Oklahoma Court of Appeals for rehearing was denied on May 3, 1983. On June 28, 1983 the Oklahoma Supreme Court denied certiorari. On September 23, 1983 Associate Justice Byron White extended the time within which to file a petition for a writ of certiorari to Oct. 26, 1983. The Jurisdiction of this Court is invoked under 28 U.S.C. 1257 and any relevant statutes.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amend-

ment to the Constitution of the United States, which provides, in part, as follows:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Carole June Caton filed for divorce from Paul William Caton in the District Court of Tulsa County, Oklahoma. Carole Caton alleged that Paul Caton was not the father of her minor child (12 months), and requested blood grouping tests to establish this. The District Court ordered blood tests. Carole Caton and her minor child had blood grouping tests performed. Paul Caton refused to comply with two District Court orders requiring him to provide blood samples.

The District Court granted a divorce and found Paul Caton in willful contempt of court, but adjudicated that Paul Caton was the father of the minor child. The District Court took no action to enforce the blood grouping orders

against Paul Caton.

Carole Caton appealed to the Oklahoma Court of Appeals, Division no. 1, requesting that the District Court of Tulsa County be instructed to adjudicate the question of paternity against Paul Caton (In this case, this means adjudicating that he is not the father), or alternately, to enforce its blood grouping order against Paul Caton. The Oklahoma Court of Appeals denied the appeal on Feb. 8, 1983.

Carole Caton filed a petition for rehearing, which was granted. The Oklahoma Court of Appeals, Division 1, again denied the appeal, substituting a new opinion.

The Oklahoma Court of Appeals denied a second petition for rehearing on May 3, 1983.

On May 20, 1983, Carole Caton petitioned the Oklahoma Supreme Court for a writ of certiorari.

On June 28, 1983, the Supreme Court of Oklahoma denied certiorari, with six justices concurring and three dissenting.

REASONS FOR GRANTING THE PETITION

Oklahoma Statute 10 O.S. § 501 provides:

> "In a civil action or actions in the nature of a civil proceeding in which paternity is a relevant fact, the court *** upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall, order the mother, child, and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice are required."

The Act, on its face, applies to <u>any party</u>. There is nothing in the Act to support an interpretation that the Act applies only to men seeking to show nonpaternity, but not to women seeking to show nonpaternity.

The Oklahoma Court of Appeals held that it was "socially repugnant" for a woman to, in effect, illegitimize a child, by proving nonpaternity, and that the act was intended for use by men to avoid support payments. The use of the Act by a man would also illegitimize a child if nonpaternity were proven, and should be equally socially repug-

nant. However the Oklahoma Court of Appeals held that such use by a man was proper.

Petitioner claims that the use of Oklahoma Statute 10 O.S. § 501 by men, but the denial of its use by women constitutes impermissible, invidious discrimination solely on the basis of sex. The U.S. Supreme Court has held, in the cases of Reed vs. Reed, 404 U.S. 71 and Frontiero v. Richardson, 411 U.S. 677, that discrimination based upon sex constituted invidious discrimination and could not stand absent a compelling state reason. There is no compelling state reason which would authorize men to dispute the paternity of children born during wedlock, but not authorize women to dispute the paternity of the same child born during wedlock. The Court of Appeals erred in not ordering that the issue of paternity be resolved against the party refusing to provide the court-ordered blood sample, or by alternately instructing the trial court to enforce its blood grouping order.

The Fourteenth Amendment provides in part: "No State shall...deprive any person of life, liberty, or property, without due process of law...". The Supreme Court of the United States decided in Little vs. Streater, 452 U.S. 1, that the absence of blood grouping tests denied petitioner due process by denying him "...a meaningful opportunity to be heard". While the reasons for denial of petitioner's opportunity to be heard by presenting blood grouping evidence are different from the reasons in Little vs. Streater, they are no less a denial of due process. The decision in Little vs. Streater referred to Mathews vs. Eldridge, 424 US 319, in setting three standards for a due process claim. Under the first standard a significant private interest must be affected. In this case it is petitioner's interest of having the filiation of her child correctly ascribed to her present husband, rather than to her former husband, who refuses to allow filiation to be determined by the blood grouping tests twice or-

dered by the trial court. Petitioner and her present husband have already been heard, by submitting to blood grouping tests and obtaining expert opinion ascribing a 96.7% probability of paternity to her present husband. The second standard is consideration of the risk of erroneous deprivation of such private interest through the procedures used. The use of a presumption of legitimacy causes great risk of error. This risk of error could be made almost nil by the scientific blood grouping tests ordered by the trial court, but refused by the respondent, Paul Caton. The third standard is consideration of the Government's interest "including...the fiscal and administrative burdens". The State of Oklahoma has not been asked to pay for blood grouping tests, nor to take on substantial administrative burdens if they are performed. The sole possible state interest is the social interest of not illegitimizing the child. In this case there is no possibility of illegitimizing the child. Peti-

tioner's present husband has testified that he is the father of the minor child and accepts her as his daughter, this in addition to the 96.7% probability of paternity scientifically ascribed to him by blood grouping tests. It would be simple for the trial court to declare petitioner's present husband the legal father. In this way the child would not be illegitimized, rather she would be correctly legitimized to her natural father.

CONCLUSION

I, Carole June Lawson (formerly Caton), respectfully request that the United States Supreme Court grant this petition for writ of certiorari, and reverse the decision of the Oklahoma Court of Appeals, by directing that Paul William Caton be judged not to be the natural father of my minor child, or by directing that the trial court enforce its orders requiring Paul William Caton to provide samples of his blood.

Respectfully submitted,

Carole June Lawson

CAROLE JUNE LAWSON (formerly Caton)

I certify that a copy was sent to:

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TABLE OF CASES

Reed vs. Reed, 404 US 71, 30 L Ed 2d 225, 92 S Ct 251.

Frontiero vs. Richardson, 411 US 677, 36 L Ed 2d 583, 93 S Ct 1764.

Little vs. Streater, 452 US 1, 68 L Ed 2d 627, 101 S Ct 2202.

Mathews vs. Eldridge, 424 US 319, 47 L Ed 2d 18, 96 S Ct 893.

CONSTITUTION

Amendment XIV - Certified true copy published in USCA.

STATUTES

28 U.S.C. 1257

APPENDIX A

NOT FOR PUBLICATION

THE COURT OF APPEALS OF THE STATE OF OKLAHOMA

(Division No. 1)

CAROLE JUNE CATON, Appellant,	)	
vs.	)	No. 57,002
PAUL WILLIAM CATON, Appellee.	)	

APPEAL FROM THE DISTRICT COURT OF

TULSA COUNTY, OKLAHOMA

HONORABLE BERT C. McELROY, JUDGE

A F F I R M E D

Bruce M. Townsend
Tulsa, Oklahoma, For Appellant,

Gomer A. Evans, Jr.
G. Bruce Sewell
Tulsa, Oklahoma, For Appellee.

Opinion by LESTER A. REYNOLDS, Presiding Judge:

Carole June Caton (Appellant) contends that the trial court erred in failing to im-

pose sanctions against Paul William Caton (Appellee) for contempt of court. Appellant also alleges that the amount of child support awarded is inadequate and clearly against the weight of the evidence. Appellant further asserts that it was error to deny her alimony.

Appellant and Appellee were granted a divorce on the grounds of mutual and irreconcilable incompatibility on February 18, 1981. Appellant filed her initial petition for divorce on January 3, 1980. Temporary custody of the child of the marriage, Adrianna Vashti Caton, was granted to Appellant. Permanent custody, questions about the child's paternity, alimony, and property division were reserved for further hearing. The division of property has not been appealed.

Appellant alleged that the child, born December 26, 1978, was not fathered by Appellee. The trial court granted Appellant's motion for blood tests of Appellee pursuant to 10 O.S. 1981 § 501, which provides:

> In a civil action or actions in the

> nature of a civil proceedings in which paternity is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall, order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require. (Emphasis added.)

Appellee has consistently failed and refused to submit to blood tests. He contends that it would be repugnant to the policy of Oklahoma and to social conscience to allow Appellant to use 10 O.S. 1981 § 501 to illegitimize their daughter. We agree. He does not deny paternity of the child.

The trial court held hearings several times on Appellant's motions to hold Appellee in contempt for refusing to submit to blood tests. The record reveals that the trial court declined to cite Appellee for contempt on at least two occasions. The trial court ultimately found that Appellee was in indirect contempt of court, but found that the

interests of justice did not require that he be punished.

Appellant contends that the trial court erred in not punishing Appellant[1] for contempt of court.

A primary objective in construing any statute is to ascertain the intent of the Legislature. Midwest City v. Harris, 561 P. 2d 1357 (Okl. 1977). Statutes must be construed to render a reasonable result and to promote the general purposes for which they were enacted. AMF Tubescope Company v. Hatchel, 547 P.2d 374 (Okl. 1974).

The presumption that a child born during marriage is legitimate is longstanding, and may be rebutted only by clear, conclusive, and convincing evidence. Frankovich v. Frankovich, 459 P.2d 583 (Okl. 1969); Bell v. Territory, 56 P. 853 (Okl. 1899). This presumption reflects a strong public policy of Oklahoma.

In matters of equitable cognizance such as the case at hand, this Court will not re-

1 sic

verse the trial court's determination unless it is clearly against the weight of the evidence or established principles of equity. Nisbet v. Midwest Oil Corporation, 451 P.2d 687 (Okl. 1968).

One purpose of suits to determine paternity is to allow accused men an opportunity to present evidence of non-paternity so they may avoid having to pay support for children they have not fathered. Another purpose is to obtain support for minor children from their natural parents. Appellee does not deny that he is the father of the child in this action. He does not seek to avoid his financial responsibility to his daughter. Appellant's contention that Appellee did not have marital relations with her during the time of conception does not clearly and conclusively rebutt Appellee's testimony that the parties did engage in marital relations. The trial court's finding that Appellee is the father of the child born to Appellant is not clearly against the weight of the evidence nor is it contrary

to established principles of equity.

The trial court had the discretion under 10 O.S. 1981 § 501 not to enforce its order for blood tests if the interests of justice did not so require. Appellant has demonstrated no abuse of that discretion nor has she shown that the trial court's holding is contrary to the intended operation of 10 O.S. 1981 § 501.

Appellant's contention that the award of $100.00 per month as child support is woefully inadequate is unsupported by the record. This Court will search the entire record, but will not disturb the amount of child support allowed by the trial court unless the amount awarded is clearly against the weight of the evidence. Kirkland v. Kirkland, 488 P.2d 1222 (Okl. 1971). The only evidence regarding Adrianna's expenses was that Appellant and the child incurred approximately $560.00 per month in expenses. Appellant stated that she had no budget for the child's separate expenses. If it is assumed that the child's expenses are half of the monthly total, one must

then subtract the support which Appellant herself owes the child. When so viewed, the award of $100.00 per month is not clearly against the weight of the evidence.

The determination of an alimony award is a matter addressed to the sound discretion of the trial court. The discretion must be reasonably exercised based upon what is fair and just in light of all the circumstances surrounding the case. Peters v. Peters, 539 P. 2d 26 (Okl. 1975). Appellant has a bachelor's degree in journalism from the University of Tulsa. She was employed prior to her marriage to Appellee. Appellant presented no medical evidence showing an inability to resume gainful employment. No abuse of discretion has been shown.

Attorney's fees for this appeal should be borne by the individual parties.

AFFIRMED.

ROBINSON, J. and YOUNG, J. concur.

APPENDIX B

IN THE SUPREME COURT OF THE

STATE OF OKLAHOMA

Tuesday, June 28, 1983

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

57,002 Carole June Caton v. Paul William Caton.
Certiorari denied.
CONCUR: Barnes, C.J., Simms, V.C.J., Irwin, Hodges, Doolin, Hargrave, JJ.
DISSENT: Lavender, Opala, Wilson, JJ.

Page signed by Don Barnes,
CHIEF JUSTICE